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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/670,257

09/26/2003

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ALC 3408

4907

76614

7590

01/27/2009

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EXAMINER

AVELLINO, JOSEPH E

ART UNIT

PAPER NUMBER

2446

MAIL DATE

DELIVERY MODE

01/27/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/670,257	<b>Applicant(s)</b> MCCORMICK ET AL.	
	<b>Examiner</b> Joseph E. Avellino	<b>Art Unit</b> 2446	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4,6-20,22-34,36-39 and 41-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4,6-20,22-34,36-39 and 41-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. Claims 1-4, 6-20, 22-34, 36-39, and 41-46 are presented for examination.  
Claims 1, 17, 33, 34, 39, and 44-46 independent. The Office acknowledges the addition of independent claims 45 and 46.

### ***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 8, 2008 has been entered.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 1-4, 6-20, 22-34, 36-39, and 41-46 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Regarding exemplary claim 1, the claim recites that the threshold is set "at a high value" (limitation b), however it cannot be ascertained from the scope of the claim what is considered a "high" value. Correction is required.

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6. Regarding exemplary claim 45, the claim recites that the threshold is et "at a low value", however it cannot be ascertained from the scope of the claim what is considered a "low" value. Correction is required.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 1-4, 6-20, 22-34, 36-39, and 41-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Black et al. (USPN 7,143,153) (hereinafter Black) in view of Nisbet et al. (USPN 6,834,304) (hereinafter Nisbet) in view of Crooks et al. (USPN 6,088,688) (hereinafter Crooks).

8. Referring to claim 1, Black discloses a method of monitoring and diagnosing resource utilization within a connection oriented network made of network elements (i.e. ATM network) (e.g. abstract; col. 28, lines 40-55) and a connection resource tracker (the phrase "for maintaining a database of resource utilization" is a statement of intended use and holds no patentable weight) (i.e. the system describes an alarm which notifies a user when a particular attribute exceeds a threshold and then only if it remains over that threshold for a particular number of sampling periods, thereby inherently requiring the system to store the previously sampled resource utilizations), comprising the steps of:

specifying a plurality of resource types for the network elements of the network being defined by a capacity and a utilization (i.e. group similar devices together for a particular threshold group) (col. 170, lines 25-49);

providing a utilization threshold set at a high level for a each type of resources (i.e. threshold level for the particular group) (the phrase “used to determine whether resources are being over-utilized” is a statement of intended use and therefore holds no patentable weight) (col. 170, lines 25-49);

measuring the utilization of all resources at a network element (i.e. monitor network resource attributes) (col. 167, lines 15-25);

determining if the utilization of the resource is above the utilization threshold (i.e. triggers threshold violation) (col. 167, lines 25-65); and

generate a report of the threshold violators and send this report to a particular operator (i.e. user is notified as to the particular threshold violations) (col. 173, lines 9-20).

Black does not specifically disclose that the determination and generation of the report is done in response to a user's request, rather it is done periodically, and the use of a “specified threshold”, which checks a timer and will send an alarm if the level is above the threshold for the length of the timer. However, Black further discloses that a user is able to generate a plurality of rules to monitor the health of the system (col. 167, line 65), that a sampling timer is utilized to determine when to periodically sample the attribute (col. 169, lines 27-41), and notifying a user (i.e. generating an alarm) when a particular attribute exceeds a particular threshold for a particular number of sampling

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periods (col. 169, lines 20-27). One of ordinary skill in the art could clearly create the claimed "specified threshold" (the phrase "used to determine whether resources used are exceeding a maximum allowable limit" is a statement of intended use and therefore hold no patentable weight) rule and then set a specified time limit for which to be notified using the "sampling frequency" and sampling periods values in the threshold rules (i.e. if the user wants to be notified if the "bandwidth" threshold is exceeded for 30 seconds, the user can set the sampling frequency to 5 seconds, and then set the threshold rule to notify the user if the threshold is exceeded for 6 sampling periods). One of ordinary skill in the art would have been motivated to create this rule in the system of Black in order to tailor the system to the user's liking.

. In analogous art, Nisbet discloses another method of monitoring resource utilization within a network (e.g. abstract) which discloses creating a network audit report which reads a network element file and compares parameters of the element with the threshold values and if they are out of the bounds of the threshold, create a file which holds the parameters which are out of a valid range for the particular element (e.g. abstract). It would have been obvious to one of ordinary skill in the art to combine the teaching of Black with Nisbet in order to utilize Nisbet's audit report with the monitoring capabilities of Black in order to determine if the network elements of Black are ready for a network reconfiguration or upgrade as supported by Nisbet (col. 2, lines 5-10).

Black-Nesbit do not specifically state that the resource utilization comparison is from a resource utilization database. In, analogous art, Crooks discloses another

resource tracking system which receives resource usage information into a host computer for report generation (e.g. abstract). It would have been obvious to one of ordinary skill in the art to incorporate the resource usage database of Crooks with the threshold utilization system of Black in order for the threshold monitoring system can use this database information to be used for various rules, thereby providing more flexibility for the user as to what threshold rules may be applied.

9. Referring to claim 2, Black discloses the resource includes bandwidth (i.e. Rx and Tx traffic) (Figure 68, resource ID no. 7312).

10. Referring to claim 3, Black discloses providing a list of resources, and wherein the step of determining whether a utilization of a resource is above the corresponding utilization threshold is carried out only with respect to resources within the list of resources (this is an inherent feature, since the switch would not check resources which the administrator does not care about, since they are not in the threshold table, they would not be checked) (Figure 68).

11. Referring to claim 4, Black discloses the threshold is provided from an operator (col. 167, line 65 to col. 168, line 14).

12. Referring to claim 5, Black discloses generating a report (the Office construes "report" as any notice which will identify a resource with any information, such as an

SNMP trap) including any identified resources and presenting the report to an operator (i.e. report threshold events to SNMP manager, which sends an SNMP trap, which notifies the NMS client, which displays a notice to the user through GUI 895) (col. 169, lines 40-50).

13. Claims 6, 8-10 are rejected for similar reasons as stated above. Furthermore Black discloses generating an alarm (i.e. SNMP trap) (col. 169, lines 40-50).

14. Referring to claim 7, Black discloses the invention substantively as described in claim 5. Black does not explicitly state that the report includes the utilization of any identified resources in the report, rather a notice is sent to the user, however this information would be easily sent via an SNMP trap. By this rationale, "Official Notice" is taken that both the concepts and advantages of providing for the utilization of any identified resource in the report is well known and expected in the art. It would have been obvious to one of ordinary skill in the art to modify the teaching of Black to include the resource utilization level in the report in order to provide valuable information to the administrator for effectively managing the network.

15. Referring to claim 11, Black discloses determining whether a utilization of a resource is above the corresponding utilization threshold and the step of identifying each such resource are carried out repeatedly (i.e. sampling frequencies) (col. 169, lines 27-40).



16. Referring to claim 12, Black discloses pausing after the step of identifying each resource (i.e. the sampling frequency is a periodic check, and therefore it will pause until the next time the resource must be checked) (col. 169, lines 27-40).

17. Referring to claim 13, Black discloses the invention substantively as described in claim 9. Black does not explicitly state that the switch monitors the receipt of call connection establishment signals and does the determination only upon receipt of a call connection establishment signal, however this is a well known event triggered determination. By this rationale, "Official Notice" is taken that both the concepts and advantages of providing for checking the utilization threshold only upon receipt of an establishment signal is well known and expected in the art. It would have been obvious to one of ordinary skill in the art to modify the system of Black to include in the sampling frequency list a choice of 'on receipt of an establishment signal' in order to eliminate needless checking of values which would not change if there is no call connection signals, thereby reducing overhead processing of the device.

18. Referring to claim 14, Black discloses the invention substantively as described in claim 13. Black does not explicitly state that an alarm is generated only when an alarm has not been generated since the utilization of the resource last rose above the threshold, however this is a well known technique in order to reduce redundant alarms. By this rationale, "Official Notice" is taken that both the concepts and advantages of

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providing for generating an alarm only when an alarm has not been generated is well known and expected in the art. It would have been obvious to one of ordinary skill in the art to modify the teaching of Black to include alarm suspensions in order to reduce the likelihood of flooding a particular management computer with redundant alarms, thereby reducing overhead processing of the management server as well as reducing bandwidth congestion in the network.

19. Claims 15-22, 23-28, and 29-46 are rejected for similar reasons as stated above. Furthermore Black discloses that the system can identify resources that are below the corresponding utilization threshold (i.e. if attribute<5) (col. 169, lines 1-10).

### ***Response to Arguments***

20. Applicant's arguments dated December 8, 2008 have been considered but are not persuasive.

21. Applicant argues, in substance, that Black does not teach the "sampling timer" of Black is used to suppress alarms, rather shows a frequency as to when to gather resource attribute information. The Examiner agrees. However, Applicant is requested to review the rejection above which clearly demonstrates that one of ordinary skill would be able to utilize the sampling timer of Black with the Frequency of Events threshold rule described in col. 169, lines 20-27 to clearly meet the limitations in question. One of ordinary skill in the art would find it obvious to create rules similar to those described in

order to tailor the system to the user's liking. BY this rationale, the rejection is maintained.

### ***Conclusion***

22. Applicant has failed to seasonably challenge the Examiner's assertions of well known subject matter in the previous Office action(s) pursuant to the requirements set forth under MPEP §2144.03. A "seasonable challenge" is an explicit demand for evidence set forth by Applicant in the next response. Accordingly, the claim limitations the Examiner considered as "well known" in the first Office action are now established as admitted prior art of record for the course of the prosecution. See *In re Chevenard*, 139 F.2d 71, 60 USPQ 239 (CCPA 1943).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph E. Avellino whose telephone number is (571) 272-3905. The examiner can normally be reached on Monday-Friday 7:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey C. Pwu can be reached on (571)272-6798. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Joseph E. Avellino/  
Primary Examiner, Art Unit 2446